

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 645

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

J. "ANDY" KISSNER

AN ACT

RELATING TO VOLUNTEER LIABILITY PROTECTION; ENACTING THE
VOLUNTEER SERVICE ACT; PROVIDING CIVIL LIABILITY PROTECTION FOR
CERTAIN ACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Volunteer Service Act".

Section 2. FINDINGS AND DECLARATION. -- The legislature
finds and declares that:

A. the willingness of volunteers to offer their
services has been increasingly deterred by a perception that
they put personal assets at risk in the event of tort actions
seeking damages arising from their activities as volunteers;

B. the contributions of programs, activities and
services to communities is diminished and worthwhile programs,

Underscored material = new
[bracketed material] = delete

1 activities and services are deterred by the unwillingness of
2 volunteers to serve either as volunteers or as officers,
3 directors or trustees of nonprofit public and private
4 organizations;

5 C. it is in the public interest to strike a balance
6 between the right of a person to seek redress for injury and the
7 right of the individual to freely give of his time and energy
8 without compensation as a volunteer in service to his community
9 without fear of personal liability for acts undertaken in good
10 faith absent willful or wanton conduct on the part of the
11 volunteer; and

12 D. the provisions of the Volunteer Service Act are
13 intended to encourage volunteers to contribute their services
14 for the good of their communities and at the same time provide a
15 reasonable basis for redress of claims that may arise relating
16 to those services.

17 Section 3. DEFINITIONS. --As used in the Volunteer Service
18 Act:

19 A. "governmental entity" means any county,
20 municipality, school district, special district or similar
21 entity or any association, authority, board, commission,
22 division, office, officer, task force or other agency of the
23 state;

24 B. "nonprofit corporation" means any corporation
25 that is exempt from taxation pursuant to Section 501(a) of the

Underscored material = new
[bracketed material] = delete

1 Internal Revenue Code of 1986, as amended;

2 C. "nonprofit organization" means any organization
3 that is exempt from taxation pursuant to Section 501(c) of the
4 Internal Revenue Code of 1986, as amended; and

5 D. "volunteer" means a person performing services
6 for a nonprofit organization, nonprofit corporation, hospital or
7 governmental entity without compensation, other than
8 reimbursement for actual expenses incurred and includes a
9 volunteer serving as a director, officer, trustee or direct
10 service volunteer.

11 Section 4. SCOPE OF IMMUNITY.--

12 A. A volunteer shall be immune from civil liability
13 in any action on the basis of any act or omission of a volunteer
14 resulting in damage or injury if:

15 (1) the volunteer was acting in good faith and
16 within the scope of the volunteer's official functions and
17 duties for a nonprofit organization, nonprofit corporation,
18 hospital or governmental entity; and

19 (2) the damage or injury was not caused by
20 willful and wanton misconduct by the volunteer.

21 B. In a suit against a nonprofit organization,
22 nonprofit corporation or hospital for civil damages based upon
23 the negligent act or omission of a volunteer, proof of the act
24 or omission is sufficient to establish the responsibility of the
25 organization for the act or omission under the doctrine of

. 115706. 1

Underscored material = new
[bracketed material] = delete

1 respondent superior, notwithstanding the immunity granted to the
2 volunteer with respect to an act or omission included under
3 Subsection A of this section.

4 Section 5. APPLICABILITY. --The Volunteer Service Act shall
5 be effective as to any civil suit for damages commenced on or
6 after one hundred eighty days from the effective date of this
7 act regardless of whether the claim arose prior to that
8 effective date.

9 Section 6. EFFECTIVE DATE. --The effective date of the
10 provisions of this act is July 1, 1997.